

## **EXHIBIT 5**

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April 1, 2008

**VIA FEDERAL EXPRESS**

Howard S. Wolfson, Esquire  
Morrison Cohen LLP  
909 Third Avenue  
New York, NY 10022-4731

**Re: CDDV & CDP v. Hornell, 07 Civ. 8037 (SHS)**

Dear Howard:

Recently, Canada Dry Delaware Valley ("CDDV") and Canada Dry Potomac ("CDP") have learned that Hornell Brewing Company, Inc. ("Hornell") has been distributing new single-serve packages of AriZona Products in 16 and 20 oz. PET bottles on a widespread basis. Hornell has been distributing these packages directly through Ferolito, Vultaggio & Sons and indirectly through various third party distributors. Hornell is aware that these new packages are Exclusive Products under the terms of the CDDV and CDP Distribution Agreements and the parties' Settlement Agreement, and are not subject to any exception. Therefore, the following sales represent flagrant violations of the Consent Award. Please review these violations and respond promptly with assurances that this widespread distribution scheme will cease immediately.

First, Hornell is hereby on notice that Sam's Wholesale Club ("Sam's Club") is selling 24 Pack/20 oz. PET bottles of AriZona Iced Tea in various flavors in stores throughout the exclusive distribution territories of CDDV and CDP. We have reason to believe that Sam's Club is buying this Exclusive Product directly from Ferolito, Vultaggio & Sons.

Second, Hornell is hereby on notice that BJ's Wholesale Club ("BJ's") is selling 16.9 oz. PET bottles of AriZona Iced Tea in various flavors in stores throughout the exclusive distribution territories of CDP. We have reason to believe that BJ's is buying this Exclusive Product directly from Ferolito, Vultaggio & Sons.

PHL:5807698.1/CAN039-151063

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Finally, Hornell is hereby on notice that Mobil/Exxon outlets are selling 20 oz. PET bottles of AriZona Iced Tea in various flavors throughout the exclusive distribution territories of CDP. We have reason to believe that Mobil/Exxon is buying this Exclusive Product from McLane Company, Inc.

These sales are in clear violation of the transshipment and direct sales provisions found in Paragraphs 1 and 3 of the November 14, 2006 Letter Agreement and Sections 1.1 and 2.4 of the CDDV and CDP Distribution Agreements. Pursuant to ¶ 3 of the November 14, 2006 Letter Agreement, the exceptions to exclusivity relating to Club Stores are specifically limited to 16 oz. glass bottles and 15.5 oz. cans.

Pursuant to ¶ 10 of Undated and Unsigned Settlement Agreement and Mutual Release, which is incorporated in the Consent Award that was confirmed by the United States District Court for the Southern District of New York, Hornell is on notice of default, and has 60 days to cure these substantial violations. Unless Hornell ceases direct and indirect distribution of all PET products, CDDV and CDP will enforce their rights under the Consent Award in court.

Very truly yours,



Dana B. Klinges  
For WOLFBLOCK LLP

DBK/kbj

cc: Hornell Brewing Company, Inc. (via Federal Express)  
5 Dakota Drive, Lake Success  
New York, NY 11042  
Attn: Martin Cunningham, Esq.